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TAGS: [EFIN](#) [ETTC](#) [KTFN](#) [PREL](#) [PTER](#) [XW](#) [UNSC](#)
SUBJECT: DEMARCHE REGARDING SOMALIA SANCTIONS UNSC
RESOLUTION

REF: USUN 664

11. This is an action request. Please see para 2.

ACTION REQUEST

12. At the highest appropriate level, action addressees are requested to inform French and UK counterparts that the United States cannot agree to the automatic expiration of the sanctions after twelve months in the UK-drafted Somalia sanctions United Nations Security Council Resolution and that this issue should be resolved in the P-3 negotiations prior to circulating the resolution to the full Council. If adopted, this resolution would expand the current sanctions regime in Somalia from a comprehensive arms embargo to include targeted measures (asset freeze and travel ban) for those spoiling the peace process.

13. On 9 October, the UK Mission to the UN in New York (UKUN) informally notified USUN that they would be agreeable to dropping the "as designated by the Committee" from the asset freeze language in operative paragraph (OP) 3 of the draft resolution. If the UK has in fact agreed to drop "as designated by the Committee" from OP 3, USUN and Embassy London are requested to express gratitude for the UK's cooperation and to underscore that we believe this will serve our delegations well in the long run, as well as create a more robust sanctions regime for Somalia specifically. If the UK reverts to insisting that "as designated by the Committee," remain in OP 3, action addressees are requested to inform counterparts that the United States cannot agree to including the phrase (see paras 8 - 10).

STRATEGIC OBJECTIVE

14. The United States supports the efforts to expand the current sanctions regime in Somalia. However, in the protracted P-3 negotiations of this resolution, the UK and France have insisted on including two points in the draft UNSC resolution, which are redlines for the U.S. We seek to reiterate our position to the UK and France that the sanctions should not automatically expire (and that "as designated by the Committee" should be deleted from the asset freeze language) with a goal of persuading them to drop this/these issue(s), particularly as we have agreed to several of their requested changes during the P-3 negotiation process.

BACKGROUND

15. In July, the UNSC Sanctions Committee for Somalia recommended that the Security Council adopt a resolution providing for targeted sanctions against individuals and

entities that undermine the peace process in Somalia. The UK drafted the resolution and has had several rounds of P-3 consultations, during which we conceded on a number of points. While, UKUN says they want to secure P-3 agreement prior to circulating the resolution, they are pushing us to agree to circulation on 10 October even though we have not resolved the automatic expiration of the sanctions issue. The French want to move the resolution to the full Council for negotiation now in an effort to force our hand on the redline of having the sanctions expire automatically. When discussing Sudan sanctions in August, the French argued that the U.S. should not circulate a resolution to the Council without P-3 unity, but this is precisely what they are pushing for now.

16. TIME-LIMITED SANCTIONS

France is pressing to include in the resolution a twelve-month time limit, such that the targeted sanctions would automatically be lifted unless the UN Security Council adopts a subsequent resolution to renew the measures. Although the Council has included such time limits in other sanctions regimes (e.g., Liberia), U.S. policy has generally been to oppose time-limited sanctions for the reasons discussed below (see para 7). As a compromise, we proposed including instead a provision stating the Council's intention to "review" the measures in twelve months and decide in light of the situation in Somalia at that time whether to strengthen, terminate or otherwise modify the sanctions regime. The Council has taken this approach in other sanctions regimes (e.g., 1267 (al-Qaida/Taliban), Cote d'Ivoire, and Iran). The UK has indicated it could support such a compromise. The French Mission to the UN in New York, however, has informed USUN that they have instructions not to agree to the twelve-month "review" compromise. They have argued that it is important that the Security Council retain control of the issue and that the requirement to renew the regime every twelve months would send a useful political signal to those who feared being added to the list. It is unclear how these concerns are related to a time-limit, as well as why the twelve-month "review" compromise would be contrary to or insufficient in meeting these objectives. The French indicated that before compromising with a twelve month "review" they will first seek support for the sanctions to expire after twelve months from other members on the Council.

17. U.S. policy is not to agree to time-limited sanctions for the following reasons:

- Time-limited UN sanctions take away the Council's flexibility to respond appropriately in light of facts on the ground;
- The Security Council can terminate the targeted sanctions whenever it wishes, so the time limit is not only unnecessary in that it does not in fact afford the Council any additional "control" over the measures, but also arguably removes a level of control by allowing for automatic expiration absent Council action;
- If the UNSC has to renew these measures through adoption of a resolution every 12 months, we will always need 9 affirmative votes and no vetoes in order to have the measures continue - an unnecessary burden, especially since the Council can modify or terminate the sanctions when/if the situation in Somalia improves;
- If we support automatic expiration in this resolution, we can expect others to press for this approach in other contexts, where it may prove quite difficult to secure the necessary votes to renew contentious sanctions that the P-3 have agreed are critical to addressing significant threats to international peace and security (e.g., Iran); and
- An annual "review" has the advantage of demonstrating that the sanctions are under continuous review without the disadvantages identified above.

18. AS DESIGNATED BY THE COMMITTEE

Operative paragraph (OP) 3 of the draft resolution provides for an asset freeze on two tiers of targets: (1) individuals or entities designated by the Somalia Sanctions Committee as meeting the designation criteria set out in operative

paragraph 7; and (2) those owned or controlled by, or acting on behalf of, such individuals or entities. Until 9 October, the UK insisted on including the phrase "as designated by the Committee" to the second tier to make clear that the obligation to freeze assets with respect to second tier targets applies only where such targets are separately designated by the Committee. UKUN now says they will drop this phrase from the draft prior to circulating the resolution to the full Council. The U.S. prefers to provide for a more robust regime by requiring States to freeze assets of individuals or entities they determine qualify as second tier targets irrespective of Committee action (see para 9). The French indicated in Paris that this is not a redline for them and would support the deletion of the phrase. However, their Mission in NY tells USUN that this phrase should remain in the text.

¶9. Including the phrase, "as designated by the Committee," in OP 3 would unnecessarily narrow the scope of the asset freeze:

- The Committee would still have the authority to designate those acting on behalf of designated individuals or entities;
- Imposing a self-judging requirement on States to freeze assets of those they independently determine are controlled by or acting on behalf of designated individuals or entities would provide UNSC cover for more robust implementation by States that are more willing to be proactive. This has proven to be a useful tool, particularly in allowing States to keep pace with attempts to circumvent sanctions through the use of front companies or other proxies;
- In response to concerns related to recent domestic challenges to asset freeze implementation (i.e., ECJ ruling on Al Barakaat Foundation and Qadi): States would determine for themselves when they had a sufficient basis to apply the asset freeze to potential second tier targets;
- The potential for less uniform application of the asset freeze to second tier targets does not argue for eliminating the potential for a more robust regime.
- While this provision may be more critical in sanctions regimes like that for Iran that involve more complicated trade networks or where it is more difficult to obtain consensus to designate in the sanctions committee, if we accept language in this resolution, we can expect to be pressured to accept it in other regimes;
- The Council's practice in this regard has not been consistent, so it would be inaccurate to argue there is any clear precedent. Some UN sanctions regimes (Cote d'Ivoire, Democratic Republic of the Congo, and Liberia) include "as designated by the Committee" with respect to those acting on behalf of other designees, while other regimes do not (Sudan, 1267, DPRK).
- Neither the UK nor the French have presented arguments that merit narrowing the scope of the asset freeze and thereby potentially eliminate some UN cover for those states willing to be more proactive.

¶10. The UK indicated it would be willing to consider a compromise that would extend the obligation to freeze assets of second tier targets "as designated by the Committee or by Member States." We are concerned that "as designated by Member States" could be read to mean States are obligated to freeze assets based on national lists of other States, and we cannot agree to that.

DRAFT RESOLUTION

¶11. The Security Council,

Recalling its previous resolutions concerning the situation in Somalia, in particular resolution 733 (1992), resolution 751 (1992), resolution 1356 (2001), resolution 1425 (2002), resolution 1519 (2003), resolution 1725 (2006), resolution 1744 (2007), resolution 1772 (2007), resolution 1801 (2008), resolution 1811 (2008), and resolution 1814 (2008), and the statements of its President, in particular those of 13 July 2006 S/PRST/2006/31, 22 December 2006 S/PRST/2006/59, 30 April 2007 S/PRST/2007/13, and 14 June 2007 S/PRST/2007/19.

Reaffirming its respect for the sovereignty, territorial integrity, political independence and unity of Somalia,

Underlining the importance of providing and maintaining stability and security throughout Somalia,

Reaffirming its condemnation of all acts of violence in Somalia and incitement to violence inside Somalia, and expressing its concern at all acts intended to prevent or block a peaceful political process,

Emphasizing the continued contribution made to Somalia's peace and security by the arms embargo imposed by paragraph 5 of resolution 733 (1992), as elaborated and amended by resolutions 1356 (2001), 1425 (2002), 1725 (2006), 1744 (2007) and 1772 (2007), and reiterating its demand that all Member States, in particular those in the region, comply fully with the requirements of these resolutions,

Recalling its intention, outlined in paragraph 6 of resolution 1814 (2008), to take measures against those who seek to prevent or block a peaceful political process, or those who threaten the Transitional Federal Institutions (TFIs) of Somalia or the African Union Mission in Somalia (AMISOM) by force, or take action that undermines stability in Somalia or the region,

Further recalling its intention to strengthen the effectiveness of the United Nations arms embargo on Somalia, outlined in paragraph 7 of resolution 1814 (2008) and to take measures against those who breach the arms embargo, and those who support them in doing so,

Recalling also its request to the Committee established pursuant to resolution 751 (1992) (hereinafter "the Committee") to provide recommendations on specific targeted measures to be imposed against such individuals or entities,

Taking note of the letter of 1 August 2008 from the Chairperson of the Committee to the President of the Security Council,

Determining that the situation in Somalia continues to constitute a threat to international peace and security in the region,

Acting under chapter VII of the Charter of the United Nations,

11. Decides that all States shall ((for a period of twelve months)) take the necessary measures to prevent the entry into or transit through their territories of individuals designated by the Committee pursuant to paragraph 7 below, provided that nothing in this paragraph shall oblige a State to refuse its own nationals entry into its territory;

12. Decides that the measures imposed by paragraph 1 above shall not apply:

(a) Where the Committee determines on a case-by-case basis that such travel is justified on the grounds of humanitarian need, including religious obligation; or

(b) Where the Committee determines on a case-by-case basis that an exemption would otherwise further the objectives of peace and national reconciliation in Somalia and stability in the region;

13. Decides that all States shall ((for the same twelve month period)) freeze without delay the funds, other financial assets and economic resources which are on their territories at the date of adoption of this resolution or at any time thereafter, which are owned or controlled, directly or indirectly, by the individuals or entities designated by the Committee pursuant to paragraph 7 below, or by individuals or entities acting on their behalf or at their direction, or entities owned or controlled by them ((as designated by the Committee)), and decides further that all States shall ensure

that any funds, financial assets or economic resources are prevented from being made available by their nationals or by any individuals or entities within their territories, to or for the benefit of such individuals or entities;

¶4. Decides that the measures imposed by paragraph 3 above do not apply to funds, other financial assets or economic resources that have been determined by relevant States:

(a) to be necessary for basic expenses, including payment for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges or exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services, or fees or service charges, in accordance with national laws, for routine holding or maintenance of frozen funds, other financial assets and economic resources, after notification by the relevant State to the Committee of the intention to authorize, where appropriate, access to such funds, other financial assets or economic resources and in the absence of a negative decision by the Committee within three working days of such notification;

(b) to be necessary for extraordinary expenses, provided that such determination has been notified by the relevant State or States to the Committee and has been approved by the Committee; or

(c) to be the subject of a judicial, administrative or arbitral lien or judgment, in which case the funds, other financial assets and economic resources may be used to satisfy that lien or judgment provided that the lien or judgment was entered into prior to the date of the present resolution, is not for the benefit of a person or entity designated pursuant to paragraph 3 above, and has been notified by the relevant State or States to the Committee;

¶5. Decides that States may permit the addition to the accounts frozen pursuant to the provisions of paragraph 3 above of interests or other earnings due to those accounts or payments due under contracts, agreements or obligations that arose prior to the date on which those accounts became subject to the provisions of this resolution, provided that any such interest, other earnings and payments continue to be subject to these provisions and are frozen;

¶6. Reaffirms the general and complete arms embargo against Somalia imposed by resolution 733 (1992), as elaborated and amended by resolutions 1356 (2001), 1425 (2002), 1725 (2006), 1744 (2007) and 1772(2007);

¶7. Decides that all States shall take the necessary measures to prevent the direct or indirect supply, sale or transfer of weapons and military equipment and the direct or indirect supply of technical assistance or training, financial and other assistance including investment, brokering or other financial services, related to military activities or to the supply, sale, transfer, manufacture, maintenance or use of weapons and military equipment, to the individuals or entities designated by the Committee pursuant to paragraph 7 below;

¶8. Decides that the provisions of paragraphs 1, 3, and 7 above shall apply to the following individuals and, as appropriate, entities, as designated by the Committee;

(a) Individuals or entities who engage in or provide support for acts that threaten the peace, security or stability in or related to Somalia, including acts that threaten the Djibouti Agreement of 18 August 2008 or any other peaceful political process, or threaten the TFIs or AMISOM;

(b) Individuals or entities who breach the measures as described in paragraphs 6 and 7 above; or

(c) Individuals or entities who impede access to, or

distribution of, humanitarian assistance to Somalia;

¶9. Decides that the measures outlined in paragraphs 1, 3 and 7 in this resolution shall cease to apply in respect of such individuals or entities if, and at such time as the Committee removes them from the list of designated individuals and entities;

¶10. Decides to expand the mandate of the Committee to include the following tasks:

(a) to seek from all States, in particular those in the region, information regarding the actions taken by them to implement effectively the measures imposed by paragraphs 1, 3, and 7 above and whatever further information it may consider useful in this regard;

(b) to examine and take appropriate action on information regarding alleged violations of measures imposed by paragraphs 1, 3 and 7 of this resolution, paragraph 5 of resolution 733 (1992) and paragraphs 1 and 2 of resolution 1425 (2002);

(c) to consider and decide upon requests for exemptions set out in paragraphs 2 and 4 above;

(d) to designate individuals and entities pursuant to paragraph 7 above;

(e) to amend its existing guidelines as may be necessary to facilitate the implementation of the measures imposed by this resolution and include in such guidelines a requirement on States to provide information where possible as to why any individuals and/or entities meet the criteria set out in paragraph 7 and any relevant identifying information;

(f) to report at least every 90 days to the Security Council on its work and on the implementation of this resolution, with its observations and recommendations, in particular on ways to strengthen the effectiveness of the measures imposed by paragraphs 1, 3 and 7 above;

¶11. Decides that the mandate of the Monitoring Group referred to in paragraph 3 of resolution 1811 (2008) shall also cover the measures set out in paragraph 6 above;

¶12. Reminds all States of their obligation to implement strictly the measures imposed by this and all relevant resolutions;

¶13. Decides that all States shall report to the Committee within 90 days of the adoption of this resolution on the steps they have taken with a view to implementing effectively paragraphs 1 and 7 above;

¶14. Decides to review the measures imposed by paragraphs 1, 3, and 7 above, with a view to their possible strengthening, in 12 months or sooner if necessary;

¶15. Decides to remain actively seized of the matter.

END TEXT

POC AND REPORTING DEADLINE

¶12. Jean T Clark (clarkjt@state.sgov.gov, 202.736.7736) in IO/PSC is the point of contact. Reporting deadline is 10 October 2008.

¶13. Department appreciates Posts' efforts.
RICE